

From: Noah Gibbs
To: Microsoft ATR
Date: 1/23/02 8:34pm
Subject: Microsoft Settlement

Sirs,

As the target of much well-reasoned (and much poorly-reasoned) commentary on the DoJ's antitrust settlement with Microsoft, I'm sure you've heard a great deal about the technical merits of the settlement and its specific language. I'd like to reiterate a couple of those key points again, and state my support for the viewpoint that the proposed settlement neither fully addresses Microsoft's criminal behavior nor discourages them from continuing it.

First point: lack of requirement of action. The settlement says a number of things which Microsoft "must" reveal, any of which may be easily slipped around by claiming that those protocols must stay secret for the integrity of Windows, and none of which must be revealed to anyone other than competing corporations -- not, for instance, hobbyist programmers like myself who write Open Source software nor to the public at large.

Second point: lack of penalties. Penalties for MS's failure to respect this settlement are not spelled out. Given MS's long history of ignoring such court mandates, the lack of such penalties (other than extending the period for which they ignore them) is ludicrously negligent. We all know they'll break the agreement if they feel it's in their best interests, so the question is "what will happen to them when they do?" That question remains unanswered.

Third point: lack of scope. The settlement addresses some (but not all) of the points addressed by Judge Thomas Penfield Jackson's original judgement, but leaves out a number of them that he didn't cover properly. The simplest one, the one that proves their maintenance of monopoly and badly hurts OEMs and consumers, is their contract clauses preventing OEMs from shipping machines with multiple operating systems preinstalled and bootable ("dual-boot" or "multi-boot" machines). This is active maintenance of their monopoly, and prevents consumers from being able to buy machines with non-MS operating systems _even if they are willing to buy an MS OS as well_. If there is any question of whether the OEMs can simply find no other operating system to include, look at operating systems like Linux or BeOS which were offered to them freely. In the current market, given OEMs incredible pressure to differentiate themselves in any way, why have essentially no dual-boot systems come to market? Why does no major OEM offer, for instance, a machine preloaded with Linux? Why does no major manufacturer offer a machine with no operating system at all, allowing consumers not to pay MS? MS's licensing practices support their monopoly most directly, and

have gone essentially unaddressed. As a consumer, I feel both deeply disappointed and betrayed that the US Government initiated and concluded these proceedings without a very serious look into these deplorable practices.

Until Microsoft is restricted from controlling standards, killing those it does not control, true innovation will remain shackled. Until Microsoft has competitors, Operating Systems in current use will always be insecure, as Microsoft's internal processes guarantee. While Microsoft can leverage its Operating System monopoly to kill products in competing fields (handheld computers, web browsers, application software, home entertainment, video game consoles) this contagion will spread. We have seen the results of Microsoft working without competition, as Microsoft Office in modern days demonstrates, or Windows 3.1, NT, 95 and 98 -- prior to the rise of Linux. It is too early to give up on the information revolution, and so it is too early to let Microsoft run unfettered, destroying the technology industry that gave birth to it, as it has demonstrated every intention to do.